



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

MISC JUDICIAL REVIEW APPLICATION NO. 1 OF 2017

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL
REVIEW AND ORDERS OF CERTIORARI TO BRING TO THE HIGH COURT AND TO
QUASH THE JUDGMENT/AWARD AND DECISION OF THE MWEA ADVISORY
COMMITTEE AWARD NO. 19 OF 1995**

AND

IN THE MATTER OF RICE HOLDING NO. 185 TEBERE UNIT 7

AND

IN THE MATTER OF LAW REFORM ACT (CAP 26)

AND

IN THE MATTER OF CIVIL PROCEDURE ACT

AND

IN THE MATTER OF THE ESTATE OF LUKA GATUNE NDEGWA (DECEASED)

REPUBLIC OF KENYA.....APPLICANT

VERSUS

MWEA IRRIGATION SCHEME.....1ST RESPONDENT

SENIOR MAGISTRATE COURT WANGURU.....2ND RESPONDENT

DAVID NDERITU GATUNE.....3RD RESPONDENT

MICHAEL MURERIA GATUNE.....4TH RESPONDENT

DANSON MACHARIA GATUNE.....5TH RESPONDENT

AND

JOSEPH GACHERU GATUNE.....EX-PARTE APPLICANT

RULING

By his Chamber Summons application dated 28th June 2017 and filed herein on 30th June 2017, the Ex-parte Applicant **JOSEPH GACHERU GATUNE** seeks the following orders:

1. That leave to file and apply for an order or certiorari be granted to the Applicant to quash the decision and order of proceedings of the tribunal relating to the matter of rice holding No. 185 TEBERE UNIT being the Estate of LUKA GATUNE NDEGWA (deceased) as confirmed as a judgment of the Court vide WANGURU CASE No. 19 of 1994.

2. That costs of this application be in the cause.

The application is supported by the Applicant's statement, the proceedings in **WANGURU PRINCIPAL MAGISTRATE'S MISCELLANEOUS CASE No. 19 of 1994**, arbitration proceedings conducted by the District Commissioner Mwea with regard to plot No. 185 TEBERE on 28th February 1995 and an order issued by **S.M. JUMA DISTRICT MAGISTRATE 1** at **WANGURU COURT** on 18th JUNE 1998 in **MISCELLANEOUS CASE No. 19 of 1994**.

What comes out of my perusal of all the above documents is that rice holding No. 185 TEBERE SECTION was originally registered in the names of **GATUNE NDEGWA** (deceased) who had nominated his eldest son **DAVID NDERITU GATUNE** as his successor. That nomination was confirmed by the **PRINCIPAL MAGISTRATE'S COURT WANGURU** in **MISCELLANEOUS CASE No. 19 of 1994** by an order issued by **S.M. JUMA DISTRICT MAGISTRATE II** on 11th July 1995. That is the order that the Applicant seeks to quash and it is clear from the record herein that he has made previous unsuccessful attempts to have that order set aside.

Order 53 Rule 2 of the Civil Procedure Rules is very explicit. It states:

“leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed by any Act; and where the proceedings is subject to appeal and a time is limited by law for the bringing of the appeal, the Judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired”
Emphasis added

The orders sought to be quashed were issued some twenty (20) years ago. The first order was by **S.M. JUMA DISTRICT MAGISTRATE** issued on 11th July 1995 confirming the nomination of **DAVID NDERITU GATUNE** as successor to the rice holding No. 185 TEBERE. The said Magistrate issued another similar order on 18th June 1998 when dismissing the Applicant's application to set aside that order.

This application seeking leave to file an application for orders of certiorari is well out of time. It is accordingly dismissed with no order as to costs.

B.N. OLAO

JUDGE

28TH JULY, 2017

Ruling delivered, dated and signed in open Court this 28th day of July 2017

Applicant present in person.

B.N. OLAO

JUDGE

28TH JULY, 2017